



Introduction to Islamic Law
First Year Elective

Volume I

Professor Anver Emon

Winter 2006

Faculty of Law
University of Toronto

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UNIVERSITY OF TORONTO

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Course Syllabus

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Course Description

This course introduces students to historiographically and conceptually significant topics in the field of Islamic law and legal theory. Relying on multiple disciplines, students will explore the history, politics, culture and theory underlying the origins of Islamic law from the early 8th century, its development through what is often called the “classical period” (i.e. circa 9-14th centuries), and its reintroduction and application in the modern nation state setting. The readings are meant to provide substantive background for students as they listen to and engage each other via the lecture and discussion that occur in the classroom.

Course Requirements

Attendance and class participation are required. At least 4 students will be assigned a week during the term in which they will be the class experts. They are expected collectively to have read all the materials for the week, and will initiate class discussion. Students not assigned as experts for that week are also expected to have completed the reading and contribute to the discussion.

In addition to class participation noted above, students will also be evaluated on the basis of a 20 page paper to be handed in at the end of the term.

Required Readings

Wael Hallaq, *Origins and Evolution of Islamic Law*
Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*
Course reader

Course Readings

Week 1: Introduction

Week 2: Historical Overview of Islamic Law: I

Hallaq, *Origins*, pp. 1-101

Week 3: Historical Overview of Islamic Law: II

Hallaq, *Origins*, pp. 102-206.

Week 4: Legal Theory I: Foundations

Qur'an, 2:62-71, 3:1-9, 4:43, 2:219, 5:90-93.

Malik b. Anas, *Muwatta' Imam Malik*, trans. Mohammad Rahimuddin, pp. 363-366 (an early source of oral traditions in translation).

Ibn Rushd (Averroes, d. 1198), *The Distinguished Jurist's Primer*, trans. Imran Nyazee (Reading, UK: Garnet Publishing, 1996), 1:xlili-xlix; 2:534-536 (a translation of a medieval Islamic law manual).

Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 16-116, 228-305 (skim).

Week 5: Legal Theory II – Foundations for Rational/Discretionary Adjudication

Robert Gleave, *Inevitable Doubt: Two Theories of Shi'i Jurisprudence* (Leiden: Brill, 2000), 183-219.

Anver M. Emon, "Huquq Allah and Huquq al-'Ibad: Juristic Discretion, Legal Heuristics, and Limited Determinacy in Islamic Law," (forthcoming).

Week 6: Legal Theory III: Law and Authority

Robert Gleave, *Inevitable Doubt: Two Theories of Shi'i Jurisprudence* (Leiden: Brill, 2000), 220-246.

Rudolph Peters, "Idjtihad and Taqlid in 18th and 19th Century Islam," *Die Welt des Islams* 20, no. 3-4, pp. 131-145.

Week 7: Jurists and Their Sources

George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981), 80-91.

George Makdisi, *Ibn 'Aqil: Religion and Culture in Classical Islam* (Edinburgh: Edinburgh University Press, 1997), 17-56.

Ibn Rushd (Averroes, d. 1198), "The Definitive Statement: Determining the Relationship Between Divine Law & Human Wisdom," in *Two Andalusian Philosophers*, trans. Jim Colville (London: Kegan Paul International, 1999), 75-110. (translation of a medieval treatise on the reconciliation between religious law and philosophy).

Averroes (d. 1198), *Faith and Reason in Islam: Averroes' Exposition of Religious Arguments*, trans. Ibrahim Najjar (Oxford: Oneworld Publications, 2001), 105-121. (translation of medieval treatise on theology).

Week 8: Premodern Workings of the Law: Law, the Judiciary and Social Context

David Powers, *Law, Society and Culture in the Maghrib, 1300-1500* (Cambridge: Cambridge University Press, 2002), 23-94.

Haim Gerber, *Islamic Law and Culture, 1600-1840* (Leiden: Brill, 1999), 32-42, 71-91, 116-132.

Week 9: Reformist Thought in Islamic Law

Daniel Brown, *Rethinking Tradition in Modern Islamic Thought* (Cambridge: Cambridge University Press, 1996), 21-59, 108-132.

Muneer Goolam Fareed, *Legal Reform in the Muslim World* (Maryland: Austin & Winfield, 1996), 79-124.

Week 10: Islamic Law in the Colonial State

Sally Engle Merry, "Law and Colonialism," *Law and Society Review* 25, no. 4 (1991): 889-922.

David Powers, "Orientalism, Colonialism and Legal History: The Attack on Muslim Family Endowments in Algeria and India," *Comparative Studies in Society and History* 31, no. 3 (July 1989), 535-571.

Michael Anderson, "Islamic Law and the Colonial Encounter in British India," in *Islamic Family Law*, eds. Chibli Mallat and Jane Connors (London: Graham and Trotman, 1989), 205-223.

Asaf A.A. Fayzee, *Cases in the Muhammad Law of India and Pakistan* (Oxford: Clarendon Press, 1965), 4-38.

Week 11: Islamic Law, Nationalism and the Advent of the Muslim State

Killian Balz, "The Secular Reconstruction of Islamic Law: Egyptian Supreme Constitutional Court and the 'Battle Over the Veil' in State-Run Schools," in *Legal Pluralism in the Arab World*, eds. Baudouin Dupret et al (The Hague: Kluwer Law International, 1999), 229-243.

Yvonne Yazbeck Haddad, "Operation Desert Storm and the War of Fatwas," in *Islamic Legal Interpretation: Mufits and Their Fatwas*, eds. Muhammad Khalid Masud et al (Cambridge: Harvard University Press, 1996), 297-309.

Wael Hallaq, "Can the Sharia be Restored?" in *Islamic Law and the Challenge of Modernity*, ed. Yvonne Yazbeck Haddad and Barbara Freyer Stowasser (Oxford: Altamira Press, 2005), 21-53.

Week 12: Islamic Law and Constitutionalism

H.A.R. Gibb, "Constitutional Organization," in *Origin and Development of Islamic Law*, vol 1 of *Law in the Middle East*, eds. Majid Khadduri and Herbert Liebesney (Washington D.C.: Middle East Institute, 1955), 3-27.

Nathan J. Brown, *Constitutions in a Nonconstitutional World: Arab Basic Laws and the Prospects for Accountable Government* (Albany: State University of New York Press, 2002), 161-193.

Text of the Draft Iraqi Constitution

The Constitution of the Islamic Republic of Iran: http://www.oefre.unibe.ch/law/icl/ir00000_.html

Week 13: Personal Status Law and the Question of Gender

Susan Spector, trans., *Chapters on Marriage and Divorce: Responses of Ibn Hanbal and Ibn Rahwayh* (Austin: University of Texas Press, 1993), 1-59.

Abdal-Rehim Abdal-Rahman Abdal-Rehim, "The Family and Gender Laws in Egypt During the Ottoman Period," in *Women, the Family, and Divorce Laws in Islamic History*, eds. Amira El Azhary Sonbol (Syracuse: Syracuse University Press, 1996), 96-111.

Ron Shahan, *Family and the Courts in Modern Egypt* (Leiden: Brill, 1997), 68-97, 101-152.

Week 14: Islamic Criminal Law and Human Rights

Qur'an, 2:178-179, 5:33-34, 5:38-39, 24:1-10

Riyad Madani, "Uqubat: Penal Law," in *Origin and Development of Islamic Law*, vol 1 of *Law in the Middle East*, eds. Majid Khadduri and Herbert Liebesney (Washington D.C.: Middle East Institute, 1955), 223-235.

Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law* (Syracuse: Syracuse University Press, 1990), 101-136.

Week 15: Islamic Law in the Modern World: A Contested Discourse

Cheryl Benard, *Civil Democratic Islam: Partners, Resources and Strategies* (Santa Monica: RAND, 2003), ix-xii, 1-48.

